

February 22, 1989, and it is accompanied by a second submission fee of \$740.00 as required by § 1.17(r).

**AMENDMENT**

In reply to the Office Action mailed November 5, 2001, please amend the above-identified patent application as follows:

**IN THE CLAIMS:**

Please amend claims 19, 21, 37, and 39 as follows:

H1  
19. (Four Times Amended) A prokaryotic expression vector encoding HCMV pp28 or antigenic portion thereof that elicits antibodies that immunologically bind to pp28, wherein said vector expresses said HCMV pp28 or antigenic portion thereof in prokaryotic cells.

H2  
21. (Four Times Amended) A prokaryotic cell which is transformed with a recombinant DNA molecule encoding HCMV pp28, or antigenic portion thereof that elicits antibodies that immunologically bind to pp28, wherein said cell expresses said HCMV pp28 or said antigenic portion.

H3  
37. (Two Times Amended) An isolated 0.5 kB KpnI/SmaI fragment encoding an antigenic portion of <sup>HCMV</sup> pp28 that elicits antibodies that immunologically bind to pp28.

H4  
39. (Two Times Amended) An isolated 1.0 kB SmaI/SmaI fragment encoding an antigenic portion of HCMV pp28 that elicit antibodies that immunologically bind to pp28.

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Please cancel claims 20, 22-36, 38, and 40 and enter new claims 41- 61 as follows:

*Sub. J. 1*  
-- 41. (New) The prokaryotic expression vector of claim 19, wherein said expression vector is a bacteriophage vector.

42. (New) The prokaryotic expression vector of claim 19, wherein said expression vector is a lambda phage vector.

43. (New) The prokaryotic expression vector of claim 19, wherein said prokaryotic expression vector encodes a fusion protein.

44. (New) The prokaryotic expression vector of claim 19, wherein said prokaryotic expression vector comprises 270 bp of HCMV pp28.

*Sub. J. 2*  
*1/5*  
45. (New) The prokaryotic expression vector of claim 19, wherein said prokaryotic expression vector comprises a 1.0 kB SmaI fragment of HCMV.

46. (New) The prokaryotic expression vector of claim 19, wherein said prokaryotic expression vector comprises a 0.5 kB KpnI/SmaI fragment of HCMV.

*Sub. J. 2*  
*cont'd*  
47. (New) The prokaryotic expression vector of claim 19, wherein said prokaryotic expression vector comprises a 0.5 kB SmaI/KpnI fragment of HCMV.

48. (New) The prokaryotic cell of claim 21, wherein said prokaryotic cell is a bacterium.

49. (New) The prokaryotic cell of claim 21, wherein said prokaryotic cell is *E. Coli*.

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~~Sub 24~~  
50. (New) The prokaryotic cell of claim 21, wherein said DNA molecule comprises a 1.0 kB SmaI fragment of HCMV.

51. (New) The prokaryotic cell of claim 21, wherein said DNA molecule comprises a 0.5 kB KpnI/SmaI fragment of HCMV.

~~Sub 22~~  
52. (New) The prokaryotic cell of claim 21, wherein said DNA molecule comprises a 0.5 kB SmaI/KpnI fragment of HCMV.

~~Sub 21~~  
53. (New) The prokaryotic cell of claim 21, wherein said DNA molecule comprises 270 bp of HCMV pp28.

54. (New) A eukaryotic cell which is transformed with a recombinant DNA molecule encoding HCMV pp28, or antigenic portion thereof that elicits antibodies that immunologically bind to pp28, wherein said cells express said HCMV pp28 or said antigenic portion thereof in said cell.

~~Sub 23~~  
55. (New) The eukaryotic cell of claim 54, wherein said eukaryotic cell is a fibroblast.

56. (New) The eukaryotic cell of claim 55, wherein said fibroblast is a human fibroblast.

57. (New) The eukaryotic cell of claim 54, wherein said eukaryotic cell is a human cell.

~~Sub 13~~  
58. (New) The eukaryotic cell of claim 54, wherein said DNA molecule comprises a 1.0 kB SmaI fragment of HCMV.

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Sub. 83  
H5  
59. (New) The eukaryotic cell of claim 54, wherein said DNA molecule comprises a 0.5 kB KpnI/SmaI fragment of HCMV.

60. (New) The eukaryotic cell of claim 54, wherein said DNA molecule comprises a 0.5 kB SmaI/KpnI fragment of HCMV.

61. (New) The eukaryotic cell of claim 54, wherein said DNA molecule comprises 270 bp of HCMV pp28.

### REMARKS

In reply to the Office Action mailed November 5, 2001, Applicants respectfully request reconsideration of this application according to the procedures set forth in 37 C.F.R. § 1.129(a). Applicants have amended claims 19, 21, 37, and 39 and added claims 41-61 to more particularly point out and distinctly claim the subject matter Applicants regard as their invention. Support for the amended and added claims may be found throughout the specification, for example at page 2, lines 9-21; page 3, lines 2-13; page 4, lines 6-18, and 24-26; page 5, lines 10-28, and in figure 1.

#### I. 35 U.S.C. §112, First Paragraph

The Office has rejected claims 19-39 under 35 U.S.C. §112, first paragraph, for allegedly failing to enable one skilled in the art to make and use HindIII R restriction fragments in strains other than Ad169 of HCMV. (Office Action, page 2.) Applicants have amended claims 19, 21, 37, and 39, and cancelled claims 20, 22-36, 38, and 40. Applicants submit that the specification teaches generally applicable methods of using